IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 82 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIJAYKUMAR RAMNIKLAL SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 82 of 1995

MR MB GANDHI for Petitioner No. 1

MR PD VYAS for Petitioner No. 1

MR SJ DAVE, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 03/03/2003

ORAL JUDGEMENT

This is an application in revision filed by petitioner under Section 397 read with Section 401 of the

Code of Criminal Procedure, 1973 (for short, "the Code") challenging an order dated 25/01/95 recorded in Criminal Case No. 513 of 1991 by the learned Judicial Magistrate, First Class at Chanasma dismissing his application for his discharge from the said criminal matter.

2. It seems from the record that the present petitioner along with two other accused persons namely Patel Manilal Joytiram and Patel Rajnibhai Manilal were facing trial before the said court in Criminal Case No. 513 of 1991 on the strength of a First Information Report filed by Patel Bhodabhai Bhudardas which was culminated in submission of chargesheet before the said Court.

3. The present petitioner stands as accused no. 3 in the said criminal case. He submitted an application before the said court stating that there is no prima facie evidence about his involvement in the offence in question, and therefore, he may be discharged.

4. After hearing, the trial court found that since there was material against the petitioner, he could not be discharged. Therefore, the said application was dismissed.

5. Feeling aggrieved by the said order of the trial court, the petitioner - original accused no. 3, has preferred this application before this Court. It has been contented here, that in view of an agreement produced on record at Page 30, no offence can be said to have been made out against the petitioner and therefore, the petitioner was required to be discharged by the trial court. It is , however, contended that the chargesheet, Page 28, includes offences punishable under Section 406, 420, 504, 506(2) read with Section 114 IPC. He also states that it is a known principle of law that an offence punishable under Section 406 IPC cannot go with an offence punishable under Section 420 IPC.

6. It is, therefore, contented that the order of the trial court is illegal and perverse and deserve to be set aside and the present revision application be allowed.

7. On admission of the revision application, "Rule" was issued to the State. Mr.S J Dave, learned APP appeared on behalf of respondent - State. I have heard Mr.M B Gandhi, learned advocate for the petitioner and Mr.S J Dave, learned APP on behalf of respondent - State and have perused the papers on record. Learned advocate for the petitioner has argued that in view of the agreement on record, at Page 30, no offence can be said

to have been made against the petitioner. There is a declaration given by one Maniben Manilal Patel who happens to be the wife of the first accused before the trial court. It is required to be considered that this document is still required to be proved. Unless the document is proved before the trial court, in accordance with the provisions made in the Evidence Act, 1872, the said document cannot be considered by the trial court and sameway, it cannot be considered by this Court also at this stage, for the purpose of discharge of the present petitioner. Therefore, it cannot be said that the trial court has committed illegality in not discharging the present petitioner on the strength of this document. Therefore, the order of the trial court cannot be treated to be illegal on this count. The second contention is that an offence punishable under Section 406 IPC cannot go with an offence punishable under Section 420 IPC. Now, the court has not framed charge against the petitioner with respect to these two offences. It is true, that these two offences are stated in the last column of the chargesheet. However, the trial court has not framed charge against the petitioner at the time of hearing of the parties. At the stage of framing of charge, it would be open to the petitioner to raise the aforesaid argument before the said court as and when the said argument is raised. Then, in that event, the trial court will naturally consider and decide the said request of the present petitioner. But, simply because these two offences are included in the chargesheet, it has no effect on the order of the trial court in not discharging the present petitioner. Therefore, the order of the trial court not discharging the present petitioner cannot be treated to be illegal, on the said count. In that view, there is no merit in the present revision application and therefore, it deserves to be dismissed.

8. For the foregoing reasons, this revision application is dismissed. Rule is discharged. Interim relief granted earlier stands vacated.

(D. P. Buch, J.)

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